



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,848	11/05/2003	Bindu Rama Rao	14319US02	7791

23446 7590 01/05/2007
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
----------	--------------

2192

MAIL DATE	DELIVERY MODE
-----------	---------------

01/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/701,848

Applicant(s)

RAO ET AL.

Examiner

Michael J. Yigdall

Art Unit

2192

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17 and 19-22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 7.

It is noted that Applicant's amendment responds to the objection to claim 18 and rejection of claims 17-21 under 35 U.S.C. 112, second paragraph. Both are withdrawn in view of the amendment. Applicant's amendment does not change the scope of the claimed invention, and therefore will be entered. The subject matter recited in claims 1-17 and 19-22, as amended, was addressed in the final Office action mailed on August 15, 2006. Accordingly, claims 16, 17, 19 and 22 stand rejected under 35 U.S.C. 102(e) as being anticipated by Marsh, claims 1-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lajoie in view of Herley, and claims 20 and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh in view of Lajoie.

Continuation of 11.

Applicant's arguments have been fully considered but they are not persuasive.

Applicant concludes that Marsh fails to teach, suggest or disclose "storing the information for updating firmware or software in a location in the file system." Specifically, Applicant states that Marsh discusses delivering and installing a firmware upgrade patch to a fixed data storage device, but contends that there is no discussion in Marsh that the upgrade patch is stored in a location in a file system (remarks, page 7).


However, Marsh expressly discloses, "Once the boot process has completed, the method for performing firmware upgrades 700 may be configured to clean up the file system by removing the flash application 556 and the firmware revision 552 from the on the fixed storage data device 310" (paragraph [0049], lines 13-17). In other words, to clean up the file system, Marsh removes the flash application 556 and the firmware revision 552 from locations in the file system on the fixed data storage device. The firmware patch that Marsh stores on the fixed data storage device (see, for example, paragraph [0047], lines 6-16) includes the flash application 556 and the firmware revision 552 (see, for example, FIG. 4). Thus, as set forth in the final Office action, Marsh does disclose that "information for updating firmware or software" is stored in a location in a file system.

Applicant contends that Lajoie fails to teach, suggest or disclose "a file system," that Lajoie fails to teach, suggest or disclose software that downloads information for updating firmware, and that Lajoie fails to teach, suggest or disclose "update software that supports retrieving information for updating firmware" (remarks, pages 8-9).

However, as set forth in the final Office action, Lajoie illustrates a file system within the non-volatile memory 210 (see, for example, FIG. 2). The file system comprises a firmware header area 215, an application program area 220, an upgrade program area 230, a communication protocol stack area 240 and a mutable interrupt vector table area 250, as illustrated. Additionally, it is noted that Lajoie discloses downloading "information for updating firmware" from a server to the non-volatile memory (see, for example, paragraph [0034], lines 1-4). The feature that is actually recited in claim 1, the "loader software that supports a plurality of loaders, wherein, during operation, each of the plurality of loaders performs downloading of specific information for updating firmware," is suggested by Herley. The rejection of claim 1 is based on a combination of Lajoie and Herley. Furthermore, as set forth in the final Office action, Lajoie discloses an upgrade program 320 that does indeed support retrieving information for updating firmware, in one sense because it interacts with the server to update the firmware (see, for example, paragraph 0031, lines 1-4). In another sense, the upgrade program 320 supports retrieving information for updating firmware because it copies a new upgrade program (i.e., "information for updating firmware") from the application program memory area 220 (i.e., the location to which the information for updating firmware was already downloaded) to the upgrade program memory area 230 (see, for example, paragraph [0035], lines 4-13). With respect to Applicant's characterization of Lajoie (remarks, page 9), it is noted that the upgrade program 320 is always involved in the updating process (see, for example, paragraph [0033], lines 11-18).

Moreover, in response to Applicant's arguments, it is respectfully noted that there is nothing recited in the claims to distinguish Applicant's broadly termed "file system" from the teachings of the references. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

MY


TUAN DAM
SUPERVISORY PATENT EXAMINER